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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/668,297
Filing Date: September 24, 2003
Appellant(s): COLE ET AL.

John E. Grosselin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/20/07 appealing from the Office action mailed 8/14/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,648,864	Ronn et al.	11-2003
5,649,914	Glaug et al.	7-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 2, 5, 6, 8-16, 18-22, 25, 27-31, 34, 35, and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ronn et al. USPN 6648864.

Regarding claims 1, 2, 5, 22, 25, 29-31, 34, and 39-45 discloses a visual identification device for absorbent articles comprising: two or more size designations and two or more product designations (Figure 4a). Ronn does not specifically disclose two or more absorbency designations. However, because the display designates different sizes and different stages of development, it would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about different absorbencies, since the general concept is to provide a fit appropriate for the child's state of development and it is considered obvious that different sizes and particularly different stages of development, such as a training pant, has different levels of absorbency. For example, Glaug USPN 5649914 teaches a toilet training aid with a low absorbent capacity.

As to claims 6 and 35, see Figures 4a-5a.

As to claims 8, 9, 27, 28, 37, and 38, see Figure 4a where the products have graphical codes denoted by indicia as broadly as claimed.

As to claims 10 –16 and18-21, see col. 2, lines 15-46.

(10) Response to Argument

Applicant's arguments filed 3/20/07 have been fully considered but they are not persuasive.

Applicant argues the examiner has erroneously assumed that different sizes and particularly different stages of development have different levels of absorbency. Applicant argues absorbency can not necessarily be linked to size. Although size and absorbency are two different elements, it is inaccurate to conclude that size and absorbency are not linked. Applicant uses the example of a feminine hygiene product that has a small size and a large absorbency. However, as compared to a diaper a feminine hygiene product is a much smaller article and has a much smaller amount of absorbency.

Applicant also argues stage of development and absorbency are two different elements or feature of the absorbent article which are also not directly proportional to each other in every instance. Again, the examiner disagrees that one can not correlate size and product designations and absorbency. In the case of Ronn, the display designates different stages of toilet training. In the later stages of toilet training, the toddler is generally provided with a more lightweight, pantlike garment with decreased absorbency to aid in toilet training. In this instance one having ordinary skill in the art would be motivated to provide information regarding the absorbency of the product.

As to claims 14, 22, 30, 40, 42, 43, and 45, Applicant argues that Ronn fails to teach or suggest a chart having a size axis and an absorbency axis, the size axis corresponding to size designations and the absorbency axis corresponding to absorbency or wherein at least two absorbent product designations that correspond to one of the two or more size designations. However, Ronn teaches display information containing sizes and different stages of development (col. 4, lines 6-55). Ronn does teaches the different stages of development and different sizes within the different stages of development. Ronn does not specifically teach absorbency designations. However, as discussed above, because the display designates different sizes and different stages of development, it would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about different absorbencies. One having ordinary skill in the art would be motivated to modify Ronn with absorbency information. Doing would provide the consumer with information to allow them to select an appropriate absorbent article and a fit appropriate for the child's state of development and it is considered obvious that different sizes and particularly different stages of development, such as a training pant, have different levels of absorbency since the purpose of a training pant is to alert the child to wetness and to foster a desire to change the pant. A pant having the same absorbent capacity as an infant diaper would not encourage the child to change the pant.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jacqueline F Stephens/

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